

### REMARKS

Claims 1-26 are pending in the present application, of which claims 1-19 and 26 are under consideration and claims 20-25 are withdrawn without prejudice or disclaimer. Claim 1 is amended without introduction of new matter. Support for claim 1 is evident from the discussion below.

In the outstanding Office Action, claims 1, 2, 9, 12, and 14-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Richardson (U.S. Patent No. 5,976,083); claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson and Lang; claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson and Kulkarni; claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson and Heilman; and claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson and Brown.

Regarding the rejection of claims 1, 2, 9, 12, and 14-19 under 35 U.S.C. 102(b) as being anticipated by Richardson, that rejection is now respectfully traversed.

Amended claim 1 recites, in part, "identity check means for verifying said user's identity, said identity check means operable in an active mode, wherein said verifying said user's identity is processed ~~by said user in said exercise motion right after~~ within a predetermined length of time has passed after the motion sensor stops sensing the exercise user motion". Claims 2-19 and 26 depend directly or indirectly from claim 1. Therefore, the claims presently under consideration include this limitation.

Support for the amendment is evident from Applicant's remarks in response to the prior Office Action dated February 7, 2006. More particularly, Applicant noted:

The present application relates to an exercise monitor that can identify a user's identity immediately after verifying that the user has just completed

exercise. Thus, the claimed monitor does more than simply record exercise data as conventional exercise monitors did. Its identity verification function certifies not only that exercise was completed, but it certifies the identity of the exerciser. As explained in the application, the invention can be used in an insurance system to advantageously detect that the user wearing the device is the insured. The identity certification can be used to prevent a person other than the insured from padding the exercise record data. See p. 28, at lines 15-22.

(Amendment, February 7, 2006, page 8). Further support is provided by discussion of the second embodiment, in which the user verifies his identity after the exercise monitor has determined that the user is resting (Applicant's specification, page 13, line 15-page 14, line 18).

Richardson does not teach or suggest performing an identity check "within a predetermined length of time after the motion sensor stops sensing the exercise user motion," as claimed. Rather, Richardson discloses the entry of personal data (such as weight, height, leg length, age, and sex) prior to exercise (Richardson, Table 1). The personal data is subsequently combined with physiological data, which is collected during exercise, to determine the individual's fitness (Richardson, Abstract).

Further, Richardson does teach or suggest "identity check means for verifying said user's identity", as interpreted under 35 U.S.C. 112, 6th paragraph. As the feature is claimed in means-plus-function format, applicant's specification must be consulted to determine the structure, material, or acts corresponding to the recited function (MPEP § 2111.01; citing In re Donaldson, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994)). Applicant's specification explains, "Verifying the person's identity' refers to determining whether the person who is wearing the exercise monitor is actually the insured who is the beneficiary or some other person" (Applicant's specification, page 37, lines 15-18). Several subroutines are disclosed for this function, each of which prompts the insured to input data and then compares the same against reference data indicative of the insured (Applicant's specification, page 39, line 1-page 40, line 12).

Richardson does not teach or suggest a comparison of input data and reference data to verify a person's identity. Rather, as noted, the personal data and physiological data of Richardson is used to calculate an individual's fitness (Richardson, Abstract).

Accordingly, for the above-stated reasons, applicant respectfully requests that the rejection of claims 1, 2, 9, 12, and 14-19 under 35 U.S.C. 102(b) as being anticipated by Richardson be withdrawn. As the remaining cited references do not cure the above-noted deficiencies of Richardson, applicant further respectfully requests that the remaining rejections under 35 U.S.C. § 103(a) also be withdrawn.

In view of the above, Applicants submit that each of the currently pending claims is in condition for immediate allowance. Favorable action on claims 1-2, 4-10, 12-19, and 26 is solicited.

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Respectfully submitted,

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